IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO. 53 OF 1983

THE HON'BLE MR. JUSTICE Y.B. BHATT:

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1. Whether Reporters of Local Papers may be allowed to see the judgement?

2. To be referred to the Reporter or not?

3. Whether their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

Appearance:

Mr. K.C. Shah, advocate for the petitioner.
Mr. K.V. Shelalt, advocate for the respondents.

CORAM: Y.B. BHATT J.
Date of Decision: 17-01-1996

JUDGEMENT

1. The petitioner in the present revision under section 29(2) of the Bombay Rent Act (hereinafter referred to as 'the said Act') is the original defendant-tenant, whereas the opponents herein are the original plaintiffs-landlords.

2. The plaintiffs had filed a suit averring that they are

the owners and landlords of a residential property wherein the defendant was a monthly tenant in respect of one room situated on the second floor of the said property. The plaintiffs averred that the contractual rent was Rs.75/- per month inclusive of taxes, plus electricity consumption charges. In the said suit the plaintiffs-landlords prayed for a decree of eviction against the defendant on the ground of arrears of rent for more than six months (from 1st April 1972 to 30th April 1976) plus electricity consumption charges, totalling in all Rs.3763/-.

3. The defendant appeared in the suit and contested the same by filing written statement Exh.18. In the said written statement he disputed the factual averments to the effect that he was in arrears of rent for the period in question and further contended that he had already raised a dispute regarding the standard rent by filing a standard rent application No.378/76. It may be noted at this stage that the tenant specifically averred in his written statement that he is a contractual tenant in respect of the suit premises.

4. The trial court, after raising the necessary issues at Exh.21, recording the evidence of the parties and on hearing the submission of the learned counsel for the respective parties, held that the tenant was in arrears of rent from 1st April 1972 to 30th April 1976, further found that he has was not ready and willing to pay the same, and therefore passed a decree for eviction as prayed for by the landlords. The trial court also determined the standard rent of the suit premises at Rs.75/- per month (inclusive of taxes). The trial court also passed a decree in respect of the arrears of rent and taxes. It may be noted here that the trial court has not spelt out whether the decree is passed under section 12(3)(a) of the said Act, but it appears that the trial court has also considered the alternative case on an assumption that section 12(3)(b) of the said Act may apply to the facts of the case, and has arrived at a finding of fact that the tenant is not ready and willing to pay the rent within the meaning of section 12(3)(b) of the said Act.

5. The tenant, being aggrieved by the decree of the trial court, preferred an appeal under section 29(1) of the said Act before the District Court. The appellate court, after reexamination and reappreciation of the evidence on record, confirmed the decree of the trial court. It may be noted here that the lower appellate court specifically recorded a finding, that on the facts found on the record of the case, the case would be governed by section 12(3)(a) of the said Act. However, the lower appellate court also considered the alternative case undesr section 12(3)(b) and found that even in such a case, the tenant had failed to satisfy the necessary

conditions of the said provision and had failed to establish that he is ready and willing to pay the rent. Thus, the lower appellate court confirmed the decree of the trial court even on the supposition that section 12(3)(b) of the said Act may apply to the facts of the case.

6. The tenant has, therefore preferred the present revision under section 29(2) of the Rent act, challenging the judgement and decree of the lower appellate court, confirming that of the trial court.

7. Before proceeding with the contentions raised in the present revision, it must be kept in mind that the present revision is one under section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In the context of the powers of the High Court exercisable in such revisions, the ratio laid down by the Supreme court in the case of Helper Girdharbhai (AIR 1987 SC 1782) is most relevant. In the said decision the Supreme Court has observed in substance that in exercising revisional power under section 29(2) the High Court must ensure that the principles of law have been correctly borne in mind by the lower court. Secondly, the facts have been properly appreciated and a decision arrived at taking all material and relevant facts in mind. In order to warrant interference, the decision must be such a decision which no reasonable man could have arrived at. Lastly, such a decision does not lead to a miscarriage of justice. But, in the guise of revision, substitution of one view where two views are possible and the Court of Small Causes has taken a particular view, is not permissible. If a possible view has been taken, the High Court would be exceeding its jurisdiction if it substitutes its own view in place of that of the courts below because it considers it to be a better view. The fact that the High Court would have taken a different view is wholly irrelevant.

7.1 It must also be noted that in the case before the Supreme Court, the findings of the trial court were reversed in appeal, and it was the appellate decision which was before the High Court. The High Court in the revision under section 29(2) reversed the finding. Thus, in the revision before the High Court, it was not a case of concurrent findings of fact.

8. Before proceeding with the appreciation of the evidence on record, and the discussion thereon by the lower appellate court, it is necessary to examine the undisputed facts on record and those facts which cannot be disputed. It is an admitted fact that the statutory notice under section 12(2) of the said Act was given by the landlord, dated 23rd January 1976, copy whereof is at Exh.30. The tenant had

received the same on the next day i.e. on 24th January 1976 (Exh.31). It is found on the facts of the case that the tenant had not replied to the suit notice at all, let alone within a period of 30 days. The tenant contended that he had raised a dispute as to standard rent by filing an application under section 11(1) of the said Act being standard rent application No.378/76, but he nowhere asserted that it was filed within 30 days of the suit notice. However, the said application has not been pursued by the tenant at all. It was not pursued independently nor was it tagged on with the landlords' suit and tried together. In fact the defendant has admitted in his oral deposition that he does not know the outcome of the said application. As against this, the plaintiff has definitely asserted in his deposition that the same had been dismissed for default. It is also an admitted position that neither the said application nor any order passed thereon is on the record of the suit. Thus, the only conclusion that can be drawn is that the tenant had raised a dispute by filing an application, but thereafter had not taken the trouble to pursue the same. In any case the defendant has failed to establish that the said dispute had been raised within 30 days of receipt of the suit notice by him.

9. By now it is a well settled principle of law as enunciated by a number of decisions of the Supreme Court, that the tenant must establish, in order to take the case out of section 12(3)(a), that he had raised the dispute as to standard rent within 30 days of the receipt of the suit notice. Clearly he has failed to do this. Under the circumstances it cannot be a matter of assumption that merely because he has filed a standard rent application, the same had been filed within 30 days of receipt of the suit notice.

10. Moreover, from an examination of the record of the lower appellate court it appears that the respondents in in appeal i.e. the landlords had filed a list of documents, where they produced on record the certified copy of Misc. Application No.378/77, which is the standard rent application filed by the tenant. The said certified copy also contains the order passed below the said application, which shows that the same had been dismissed for default. However, what is material, and which fact appears from the face of the certified copy, is that the said application is signed by the tenant on 6th July 1976 and is presented in the court on the same day. Obviously, therefore, assuming that the said application amounts to an application under section 11(1) of the said Act, the said application has been filed more than five years after the receipt of the suit notice by the tenant.

11. However, as already discussed hereinabove, there is no dispute that the rent was payable by the month, and since no

dispute regarding the standard rent was raised within 30 days of receipt of the suit notice by the tenant, the case would be governed by section 12(3)(a) of the Rent Act. Thus, the only question which then requires to be examined is whether the tenant has neglected to make payment of the arrears until the expiration of one month after receipt of the suit notice. On the facts of the case it is well established and cannot be disputed that the tenant has not made any such payment within 30 days of receipt of the suit notice by him. Clearly, therefore, once section 12(3)(a) of the said Act applies, and it is found that the tenant has neglected to make payment of the arrears within 30 days of the receipt of the suit notice, the court has no jurisdiction except to pass a decree for eviction against the appellant. On the facts and in the circumstances of the case, this treatment given by the lower appellate court cannot be faulted and the judgement and decree is, therefore, eminently sustainable.

12. Even otherwise the lower appellate court has considered the alternative case of the application of section 12(3)(b) of the said Act. Even here, the tenant has so conducted himself as to lose the protection of the said provision, inasmuch as he has not complied with the mandatory conditions of the said provisions. First of all, he had failed to deposit any part of the arrears of rent in the lower court, let alone deposit all the arrears before the framing of the issues. Furthermore, even after the decision of the trial court, when the defendant became aware of the quantum of his liability, he failed to deposit the necessary amount at the time of filing the appeal. Even thereafter during the pendency of the appeal, he has not been regular in making deposit of the rent as and when the same became due. Even on the date of the appellate judgement, the appellate court is constrained to observe as under:

> "I feel that the defendant tried to avoid payment of rent on one or the other ground and even today, the defendant has not deposited any arrears of rent in the court".

Thus, even assuming for the sake of argument that section 12(3)(b) may apply to the facts of the case, the defendant in the instant case has lost the protection of the said provision inasmuch as he has not complied with the mandatory conditions of the said provision. Thus, the decree of eviction passed by the trial court and confirmed by the lower appellate court is even otherwise justified.

13. This revision is therefore dismissed. Rule is discharged with no order as to costs. Ad interim stay vacated.

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